IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9637 of 1995

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

GHANABHAI SOMABHAI SOALANKI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

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1.0 The petitioner Corporation has challenged the award dated 31.03.1995 passed by the Labour Court, Nadiad in

Reference LCN No. 69 of 1989, whereby the petitioner was directed to reinstate the respondent to his original post with continuity of service and 50 % back wages.

2.0 The respondent herein was working as a Conductor with the petitioner Corporation. During the period from 08.06.1988 to 13.07.1988 the respondent had remained absent from the duties. It is the case of the petitioner that the respondent had remained absent without any report or intimation. Therefore, departmental inquiry was held, pursuant to which the respondent was dismissed from service vide order dated 04.10.1988.

2.1 Being aggrieved by the said order, the respondent approached the Labour Court by way of a reference. The Labour Court, after hearing the parties, passed the impugned award with the aforesaid directions. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 18.12.1995, this Court had stayed the operation of the award qua back wages only, pursuant to which the respondent has been reinstated in service.

Since the respondent workman is already reinstated in service, this Court is not disturbing that part of the award of the Labour Court. The benefit of continuity of service shall also be given to the respondent workman. The only question which is required to be considered by this Court is with regard to grant of 50 % back wages.

4.0 Having gone through the impugned award, it appears that the Labour Court has awarded 50 % back wages to the workman only on the ground that the allegations leveled against the respondent were not completely proved. No cogent reasons have been given by the Labour Court for awarding the same to the respondent.

4.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages

should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award of the Labour Court granting 50 % back wages to the respondent is required to be quashed and set aside.

5.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court qua granting reinstatement with continuity of service to the respondent is confirmed; and, the direction qua awarding 50 % back wages is quashed and set aside. The petitioner Corporation is directed to give all benefits to the respondent workman from the date of the publication till he is reinstated within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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